IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

WP(C).No. 10576 of 2006(H)

PETITIONER:

UMMER, AGED 70 YEARS, VALIYAPARAMBIL,
KANJIRAMUKKU, PULIKKADAV, PONNANI, MALAPPURAM.

BY ADV. SRI.C.V.MANUVILSAN
SRI.G.SUDHEER (THURAVOOR)
SRI.T.K.SUJITH

RESPONDENTS:

---

1. THE SECRETARY,
MARANCHERRY GRAMA PANCHAYAT, MALAPPURAM DISTRICT.

2. THE SECRETARY, LOCAL SELF GOVERNMENT
DEPARTMENT, SECRETARIAT ANNEX, THIRUVANANTHAPURAM.

3. THE SUPERINTENDENT OF POLICE,
MALAPPURAM DISTRICT.

R1 BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
R2 & R3 BY GOVERNMENT PLEADER SRI.K.J.MOHAMMED ANSAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.10576 OF 2006

APPENDIX

PETITIONER'S EXTS:

EXT.P1 (a) – TRUE COPY OF DEEDS EVIDENCING TITLE AND OWNERSHIP OF PETR. & EXT.P1(b)

EXT.P2 – TRUE COPY OF REGISTERED LEGAL NOTICE ISSUED BY PETR. THROUGH HIS ADVOCATE ON 21.2.06.

EXT.P2 (a) - TRUE PHOTO COPY OF POSTAL RECEIPT.

EXT.P2(b) - TRUE PHOTO COPY OF ACKNOWLEDGMENT CARD.

EXT.P3 – TRUE PHOTO COPY OF THE PILGRIM PASS ISSUED BY GOVT. OF INDIA.

EXT.P4 – PHOTOGRAPHS OF THE ILLEGALLY CONSTRUCTED ROAD BY R1.

1ST RESPONDENT'S EXTS:

EXT.R1(a) – TRUE PHOTO COPY OF ROAD REGISTER MAINTAINED BY THE PANCHAYAT.

EXT.R1(b) – TRUE PHOTO COPY OF PROJECT REPORT OF THE PANCHAYAT.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

.....

W.P.(C) No.10576 OF 2006

.....

DATED THIS THE 17th JANUARY, 2007

J U D G M E N T

The petitioner, a permanent resident of Marancherry Panchayat within Malappuram District has filed this Writ Petition seeking: (1) a writ of mandamus commanding the 1st respondent-Secretary of the Panchayat to stop all further works in connection with the construction of a road in the land of the petitioner; (2) a declaration that the Panchayat is duty bound to ask permission of the person, if the Panchayat wants to construct a new road within the limits of the Panchayat area; and (3) a writ of mandamus directing the 1st respondent to pay compensation to the petitioner for the illegal act committed on the land of the petitioner. The petitioner claims title and possession over certain lands in Sy.No.14/3 of Kanjiramukku Village by means of Exts.P1(a) and P1(b) registered documents of sale. He states that in between his land and the adjacent property belonging to his neighbour, there was a nadavaramba. Certain localites had a plan to convert the nadavaramba as a pucca road and they approached the petitioner and he would tell them that he is ready and willing to provide one-half of the land required for the proposed

road, provided his neighbour is also willing to provide the other half. The neighbour however was not willing. The petitioner states that during the last week of February, 2006 he went over to Saudi Arabia for a pilgrimage. But on coming back he was shocked to find that certain persons were constructing road upon his property. There was no consent, either express or implied, from his side in the matter of road construction and noticing the road construction, he issued Ext.P2 lawyer notice through his advocate which was acknowledged by the Panchayat vide Ext.P2(a) postal receipt and Ext.P2(b) acknowledgment card. The petitioner submits that even though the work was stopped for some time, thereafter the work was started again taking up the contention that the Panchayat is not duty bound to ask permission of any person once they decide to construct a road for the benefit of the public. On the above facts, the petitioner has raised grounds A to F and filed the Writ Petition for the reliefs already indicated.

2. The 1st respondent has filed a detailed counter affidavit in which it is contended that the road in question was constructed prior to 1985 and was known as the Thottumugham temple-Pulikkakadavu road. The temple, it is pointed out, is situated on the eastern side of the road. The road deviates from Purangu-Pulikkakadavu road. The

length of the above portion will be 450 to 500 metres. The road eversince its formation in 1985 is being maintained by the Panchayat and in this regard Ext.R1(a) copy of the road register maintained by the Panchayat is relied on in the counter affidavit. The road mentioned in Ext.R1(a), it is pointed out, was constructed by the local people based on the voluntary surrender of land by owners on either sides who are the beneficiaries of the formation of the road. To begin with, the width of the road was 3 metres and thereafter the road was handed over to the Panchayat and is presently being maintained by the Panchayat. Phase by phase the metalling work of the road was completed by the Panchayat. After the handing over of the road, the width of the road was increased from 3 metres to 5 metres at different points, since the adjacent land-owners had voluntarily left out sufficient area for increasing the width. To the immediate north of the road, near to the Thottumugham temple, the temple authorities had left sufficient space for increasing the width. The petitioner's paddy field is situated near to that area. The protection work on the side of the petitioner's paddy field is already completed. It is then pointed out that the petitioner resides not near to the area but at Pulikkakadavu. The road formation and road widening is a project

which has been taken up under the SGRY Scheme financed by the Central Government. This is a special component programme specially provided for Scheduled Castes. It is the welfare of the Thottumugham Harijan Colony in the locality which was the prime consideration. A sum of Rs.50,000/- is allotted for the work and unless the fund is utilised before 31.3.2007, the same will be lapsed. The averments in para.5 of the Writ Petition are described as false. It is contended that to Ext.P2 lawyer notice, a reply about the correct factual position was given. The counter affidavit relies on Ext.R1(b) project report also. This project report relates to the improvement work of the Thottumugham Colony road which is seen included as a project work of the Panchayat during the year 2002. The improvement work of the road is almost completed and the petitioner was watching by as the work was progressing. Objection was raised by him for the first time through Ext.P2 which was issued in February, 2006. It is also pointed out that the petitioner is a person who had given his consent at the time of initial formation of the road in 1985 along with neighbouring property owners and therefore is estopped from objecting to the improvement works which are presently taken up.

3. To the above counter affidavit, a detailed reply affidavit has

been filed by the petitioner reiterating his contentions and denying the averments in the counter affidavit. Ext.P3 document is produced to show that he had actually gone on a pilgrimage. Ext.P4 series are photographs which will show the present condition of the controversial road.

4. I have heard the submissions of Sri.Manuvilsan, counsel for the petitioner and those of Sri.T.Sethumadhavan, counsel for the 1st respondent-Panchayat.

5. Mr.Manuvilsan would make elaborate submissions on the basis of the pleadings raised by the petitioner and would invite my attention to the various documents placed on record. He would refer me particularly to Ext.R1(a) and Ext.R1(b) and submit that the road mentioned in Ext.R1(a) is an entirely different road which is having a length of only 500 metres while the road which is being objected to is another road which has a length of more than 1500 metres. There is reference in Ext.P2 lawyer notice to the road which is mentioned in Ext.R1(b) project report and according to the learned counsel it was very significant that the Panchayat did not respond to the lawyer notice at all. The learned counsel would place strong reliance on the judgment of this Court in **Moideen v. Varkey and Others** (1962 KLJ

1150) and submit that it is settled that no Panchayat has the right to open new road upon another man's property and if they do so, the act of the Panchayat will clearly be illegal and ultra vires the powers of the Panchayat. This being the position of law, relief No.2 sought for in the Writ petition is to be granted straightaway, according to counsel. He would further submit that even though it is contended by the Panchayat that the petitioner had given consent, no material has been placed by the Panchayat to substantiate that contention.

6. Mr.T.Sethumadhavan, learned counsel for the Panchayat ccould meet the submissions of Mr.Manuvilsan very convincingly. My attention was drawn by the learned counsel to the description and boundaries of the properties conveyed by Exts.P1(a) and P1(b) and submit that it is clear from Ext.P4 series photographs themselves that the petitioner's case that there was no road at all in existence but what was in existence was only a Nadavaramba or bridge cannot be correct. Mr.Sethumadhavan would submit that Ext.R1(b) is a project report of the year 2002, a point of time when the present dispute was not at all in contemplation of the Panchayat and that project report certainly refers to the improvement of the existing road by name Thottumugham Scheduled Castes Colony road. The road mentioned in

Ext.R1(a) road register has a length of 800 metres at that portion which lies between Thottumugham Temple and Pulikkakadavu. There is no room for any confusion regarding the identity of the road. Mr.Sethumadhavan would conclude submitting that in any event there is serious dispute regarding the existence or otherwise of the road earlier. In the light of such dispute, it will not be proper for this Court to endeavour to resolve that dispute sitting in discretionary jurisdiction under Article 226 of the Constitution of India and the party should be relegated to a civil court.

7. Having considered the rival submissions made at the Bar, I do not find any difficulty to agree with the submission of Sri.Manu Vilsan that if the Panchayat wants to construct a road on private properties within the area of the Panchayat, the Panchayat is bound to seek permission of the owner concerned. But the issue in this case is whether the road which is now proposed to be improved in implementation of Ext.R1(b) project was in existence earlier. That issue has become a seriously contested factual issue. I find force in the submission of Sri.Sethumadhavan that the petitioner will have to seek his remedies from the regular civil court. I relegate the petitioner to the civil court for adjudication of the issues of fact which

have cropped up in this case. The petitioner will, if so advised, file a suit before the regular civil court within one month of receiving a copy of this judgment. The period during which this Writ Petition was pending before this Court till the expiry of one month after the petitioner receives copy of this judgment will be excluded by the civil court under Section 14 of the Indian Limitation Act for the purpose of limitation. It is made clear that nothing stated in this judgment will foreclose the other legal remedies available to the petitioner.

The Writ Petition is disposed of as above. No costs.

(PIUS C. KURIAKOSE, JUDGE)

tgl